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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 MICHAEL RODRIGUEZ, ) Case No. CV 10-3261 PJW  
11 Plaintiff, )  
12 v. ) MEMORANDUM OPINION AND ORDER  
13 MICHAEL J. ASTRUE, )  
14 Commissioner of the Social )  
15 Security Administration, )  
16 Defendant. )  
17

18 I. INTRODUCTION

19 Before the Court is Plaintiff's appeal of a decision by  
20 Defendant Social Security Administration ("the Agency"), denying his  
21 application for Supplemental Security Income ("SSI"). Plaintiff  
22 claims that the Administrative Law Judge ("ALJ") erred when he found  
23 that Plaintiff failed to prove that he had established that there were  
24 changed circumstances, supporting his bid to overcome the presumption  
25 of continuing nondisability following an earlier decision that he was  
26 not disabled. For the reasons explained below, the Court concludes  
27 that the ALJ did not err.  
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## 1 II. BACKGROUND

2 Plaintiff began receiving SSI when he was a child, but became  
3 ineligible for benefits in 2002 because he was imprisoned. (Joint  
4 Stip. at 2.) Plaintiff reapplied for SSI in 2003, after he was  
5 released. (Administrative Record ("AR") 84-85.) Following a hearing,  
6 an ALJ denied his application in a decision dated November 2, 2005.  
7 (AR 84-93.) The ALJ's decision became final when the Appeals Council  
8 denied Plaintiff's request for review in July 2006, and Plaintiff  
9 failed to appeal that decision. (AR 97-100.)

10 In March 2007, Plaintiff applied for SSI, again. (AR 125-32.)  
11 The ALJ denied the application in December 2008, finding that  
12 Plaintiff had not presented evidence to overcome the presumption of  
13 continuing nondisability arising from the 2005 decision. (AR 10-21.)  
14 After the Appeals Council denied Plaintiff's request for review (AR 1-  
15 4), he commenced this action.

## 16 III. ANALYSIS

17 Plaintiff argues that the ALJ erred by applying the doctrine of  
18 *res judicata* to his case and finding that he was not disabled. (Joint  
19 Stip. 3-7, 11-12.) The Agency disagrees. (Joint Stip. 7-10.) For  
20 the following reasons, the Court sides with the Agency.

21 The doctrine of *res judicata* applies to the administrative  
22 decisions of the Social Security Administration. *Chavez v. Bowen*, 844  
23 F.2d 691, 693 (9th Cir. 1988) ("The principles of *res judicata* apply  
24 to administrative decisions, although the doctrine is applied less  
25 rigidly to administrative proceedings than to judicial proceedings.").  
26 As such, an ALJ's determination that a claimant is not disabled  
27 creates a presumption of continuing nondisability with respect to any  
28 later disability applications. *Lester v. Chater*, 81 F.3d 821, 827

1 (9th Cir. 1996). A claimant may overcome this presumption by  
2 demonstrating that there are "changed circumstances" affecting his  
3 ability to function in the workplace. *Id.* at 827-28; Social Security  
4 Ruling ("SSR") 97-4(9) ("[W]here the final decision by the ALJ on the  
5 prior claim, which found the claimant not disabled, contained findings  
6 of the claimant's residual functional capacity, education, and work  
7 experience, [the Agency] may not make different findings in  
8 adjudicating the subsequent disability claim unless there is new and  
9 material evidence relating to the claimant's residual functional  
10 capacity, education or work experience.").

11 In this case, Plaintiff argues that evidence from employees of an  
12 independent living skills center where he went for training  
13 establishes "changed circumstances" sufficient to overcome the  
14 presumption of continuing nondisability. (Joint Stip. 4-7.) He cites  
15 a 2007 report by an "evaluator and report writer" at the center who,  
16 essentially, described Plaintiff as severely impaired and incapable of  
17 functioning in the real world. (Joint Stip. 4-5 (citing AR 238-53).)  
18 This report was based on the writer's review of files, statements by  
19 Plaintiff and his family, and observations by staff at the center.

20 Because the author of this report does not have any training in  
21 the medical profession, she is considered an "other source" under the  
22 regulations. See 20 C.F.R. § 416.913(d). Thus, the ALJ was only  
23 required to provide reasons that were germane in order to discount the  
24 evidence. *Turner v. Comm'r*, 613 F.3d 1217, 1223-24 (9th Cir. 2010)  
25 (quoting *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)).

26 The ALJ met this standard. He noted that he was "highly dubious"  
27 of the statements Plaintiff and his family made to the evaluator about  
28 the extent of Plaintiff's impairment, statements that the ALJ had

1 rejected as incredible. (AR 16-18.) He pointed out, for example,  
2 that, though they claimed that Plaintiff was incapable of dressing  
3 himself, tying his shoes, and feeding himself, he had been able to  
4 burglarize a home and steal a car. (AR 17.) He noted that Plaintiff  
5 had served time in prison without any apparent difficulty. (AR 17.)  
6 He also rejected the conclusions in the report because they were based  
7 on "the faulty premise" that Plaintiff was mildly retarded. (AR 18.)

8       These reasons are germane and are supported by substantial  
9 evidence. As such, the Court concludes that the ALJ did not err in  
10 rejecting the finding in the report or in concluding that the report  
11 did not establish "changed circumstances," supporting Plaintiff's bid  
12 to overcome the presumption of continuing nondisability.

13       Plaintiff also claims that the testimony of John Ramos, "an  
14 educator and . . . interventionist" at the center established "changed  
15 circumstances." (Joint Stip. 5; AR 41.) Ramos testified, among other  
16 things, that Plaintiff "loses his cool real fast" "[i]f he gets a  
17 block of instructions given to him," generally needs supervision and  
18 assistance, and has problems with social skills and respect for  
19 authority. (AR 41, 45-56.)

20       As the ALJ pointed out, however, Ramos was a lay witness. (AR  
21 41, 44.) Thus, though the ALJ was required to consider his testimony,  
22 see *Stout v. Comm'r*, 454 F.3d 1050, 1053 (9th Cir. 2006), he was  
23 authorized to reject it for reasons that were "germane" to the  
24 testimony. *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005).  
25 The ALJ provided germane reasons for rejecting Ramos's testimony. He  
26 noted that Ramos's testimony was consistent with Plaintiff's  
27 testimony, testimony that the ALJ found incredible. (AR 19.) He also  
28 pointed out that there was no indication that Ramos had taken into

1 account the fact that Plaintiff may have been exaggerating his  
2 symptoms or that Ramos was qualified to evaluate whether Plaintiff was  
3 exaggerating. (AR 19.)

4 These reasons are germane to Ramos's testimony and supported by  
5 substantial evidence. See, e.g., *Valentine v. Comm'r*, 574 F.3d 685,  
6 694 (9th Cir. 2009) (holding, where ALJ properly rejected the  
7 claimant's testimony as incredible, "it follows that the ALJ also gave  
8 germane reasons for rejecting [a lay witness's] testimony," which was  
9 similar to claimant's). Accordingly, the ALJ properly determined that  
10 Ramos's testimony did not constitute evidence of "changed  
11 circumstances," either.<sup>1</sup>

#### 12 IV. CONCLUSION

13 For these reasons, the Court concludes that the Agency's findings  
14 are supported by substantial evidence and are free from material legal  
15 error. As such, the decision is affirmed.

16 IT IS SO ORDERED.

17 DATED: September 22, 2011.

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21 PATRICK J. WALSH  
22 UNITED STATES MAGISTRATE JUDGE

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26 <sup>1</sup> Plaintiff also alleged that the ALJ erred when he found that  
27 there were a significant number of jobs in the economy that Plaintiff  
28 could perform. (Joint Stip. 13.) In light of the Court's  
determination that the ALJ properly applied the doctrine of *res*  
*judicata*, the Court need not and does not address this issue.